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CrI.O.P.No.27245 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.27245 of 2022 and
CrI.MP.No.16738 of 2022

1.RADHAKRISHNAN
2.C.DAYANITHI

... Petitioners

Vs.

Manjula Bai

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to CC.No.387 of 2022 on the file of the Learned Judicial Magistrate, Fast Track Court, Alandur and to quash the same

For Petitioners : Mr.B.Arvind Srevatsa

For Respondent : No appearance

ORDER

This criminal original petition has been filed praying to quash the proceedings in CC.No.387 of 2022 on the file of the Learned Judicial Magistrate, Fast Track Court, Alandur.



Crl.O.P.No.27245 of 2022

2. The petitioners are arrayed as A1 and A2 in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that Vishwanatha Rao and Tara Bai (parents of the Complainant) died intestate leaving the Complainant and her 5 brothers without any declaration on partition of the properties. A suit in [C.S.No. 1004/2008](#) was filed by the Complainant before this Court as against her brothers (Defendants 1 to 5 therein) for partition and separate possession of her 1/6th share in the suit properties and later the said suit was transferred to the Learned III Additional City Civil Court, Chennai and re-numbered as O.S.No.2368 of 2020. Thereafter, the brothers of the complainant fraudulently entered into a partition deed dated 16.11.2021 registered as document No.19419 of 2021 on the file of the Sub Registrar, Thiruporur. In respect of property measuring about 4.05 acres situated at Pandur Village, Chengalpattu District suppressing the pendency of the partition suit, thereafter a sale agreement was executed by them in favour of M/s.Shri Krish Housing and Properties Pvt Ltd, in Document No.21506/2021 registered before the Sub Registrar, Thriuporur. A Power of Attorney dated 09.12.2021 was also executed by V.Murali, in favour of M/s.Shri Krish Housing and Properties Pvt Ltd. registered in Document No.21507/2021. Thereafter, the complainant had filed interlocutory application in OS.No.2368 of 2020 to implead the M/s.Shri

Page 2 of 10



Crl.O.P.No.27245 of 2022

Krish Housing and Properties Private Limited. The Managing Director of the company M/s.Shri Krish Housing and Properties Pvt Ltd has approached the Complainant for compromise and agreed to pay the above sale consideration for her 1/6th share for a sum of Rs.1,41,75,000/- (Rupees One Crore Forty One Lakhs Seventy Five Thousand only) but the Managing Director of M/s. Shri Krish Housing and Properties Pvt Ltd failed to pay the said consideration amount. Thereafter he issued a cheque for the above said amount on 28.03.2022. The cheque was returned unpaid on 30.05.2022 with the endorsement "Payment stopped by drawer". The Complainant caused a Legal Notice and thereafter filed complaint.

3. The learned counsel appearing for the petitioners raised ground that the complaint itself is not maintainable to attract the offences under Sections 138 and 142 of NI Act for the reason the respondent failed to issue statutory notice to the company and failed to add the company as accused in the complaint since the cheque was issued by the company called M/s.Shri Krish Housing and Properties Private Limited whereas notices were issued to the Directors of the Company and complaint was lodged only as against the Directors of the company without adding the company as accused.



Crl.O.P.No.27245 of 2022

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4. Heard, the learned counsel appearing for the petitioners and perused all the materials placed before this Court. Though notice was served on the respondent and her name has been printed in the cause list, no one appeared before this Court either by party or through pleader.

5. The Hon'ble Supreme Court of India and this Court repeatedly held that for the complaint for the offence punishable under Section 138 of NI Act, the company should be added as party when the cheque is issued on behalf of the company and by the company. It is relevant to extract the provisions under Section 141 of NI Act hereunder:

“141. Offences by companies.—(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had



exercised all due diligence to prevent the commission of such offence.

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Provided further that where a person is nominated as a director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “**company**” means any body corporate and includes a firm or other association of individuals; and

(b) “**director**”, in relation to a firm, means a partner in the firm.”

6. Sub-section (1) to Section 141 of the NI Act states that where a company commits an offence, every person who at the time the offence was committed was in charge of and was responsible to the



Crl.O.P.No.27245 of 2022

company for the conduct of the business, as well as the company itself, shall be deemed to be guilty of the offence. The expression “every person” is wide and comprehensive enough to include a director, partner or other officers or persons. At the same time, it follows that a person who does not bear out the requirements of “in charge of and responsible to the company for the conduct of its business” is not vicariously liable under Section 141 of the NI Act. The burden is on the prosecution to show that the person prosecuted was in charge of and responsible to the company for conduct of its business.

7. The proviso to Section 141 of the NI Act, which is in the nature of an exception, states that a person liable under sub-section (1) shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. The onus to satisfy the requirements and take benefit of the proviso is on the accused. Still, it does not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of sub-section (1) to Section 141 of the NI Act. The proviso gives immunity to a person who is otherwise vicariously liable under sub-section (1) to Section 141 of the NI Act.



CrI.O.P.No.27245 of 2022

8. Sub-section (2) to Section 141 of the NI Act states that notwithstanding anything contained in sub-section (1), where a company has committed any offence under the Act, and it is proved that such an offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officers of the company, then such director, manager, secretary or other officers of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Sub-section (2) to Section 141 of the NI Act does not state that the persons enumerated, which can include an officer of the company, can be prosecuted and punished merely because of their status or position as a director, manager, secretary or any other officer, unless the offence in question was committed with their consent or connivance or is attributable to any neglect on their part. The onus under sub-section (2) to Section 141 of the NI Act is on the prosecution and not on the person being prosecuted.

9. In the case on hand, admittedly the cheque was issued by the company. It was dishonoured for the reason 'payment stopped by the drawer of the cheque'. However, the respondent did not cause any notice as contemplated under Section 138 of NI Act to the company. Notice was issued only to the Directors i.e. the petitioners herein. The provisions of

Page 7 of 10



Crl.O.P.No.27245 of 2022

Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender.

10. In view of the above, the complaint lodged by the respondent cannot be maintained and it is liable to be quashed. Accordingly, the entire proceedings in CC.No.387 of 2022 on the file of the Learned Judicial Magistrate, Fast Track Court, Alandur is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

02.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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CrI.O.P.No.27245 of 2022

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To

Judicial Magistrate, Fast Track Court, Alandur



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CrI.O.P.No.27245 of 2022

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CrI.O.P.No.27245 of 2022

02.03.2026